

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.
ANTITRUST LITIGATION.

MDL Docket No. 1332

Hon. J. Frederick Motz

This Document relates to:

*Burst.com, Inc. v.
Microsoft Corp.,*

Civil Action No JFM-02-cv-2952

**CERTIFICATION OF CONFERENCE AND MOTION PAPERS FOR BURST.COM,
INC.'S MOTION, MEMORANDUM AND REPLY IN SUPPORT OF ITS MOTION TO
COMPEL MICROSOFT TO SEARCH FOR AND PRODUCE KEY E-MAILS**

Pursuant to Local Rules 104.8(c), Burst.com, Inc. provides copies of the parties' briefing on Burst.com's Motion to Compel and certification of a conference of counsel as required by Local Rule 104.7. The parties conducted numerous conferences addressing the issues raised in this motion. The final conference in which all issues were addressed was held on August 22, 2003 at 11:30 Pacific time and was attended by Spencer Hosie and Bruce Wecker on behalf of Burst.com, Inc. and John Treece on behalf of Microsoft.

The parties have resolved or deferred some the issues raised in this motion relating to document custodians. Of the 21 disputed individuals, Microsoft has agreed to add five custodians and Burst has agreed to not pursue three of the individuals. Burst has agreed to defer consideration of five additional custodians all as discussed in the attached letter of August 22, 2003. The parties have been unable to resolve the issue of searching Microsoft's backup tapes to which the bulk of all briefing is addressed.

DATED: August 22, 2003

SPENCER HOSIE (Ca Bar # 101777)
BRUCE J. WECKER (Ca Bar # 078530)
JOHN BURRITT McARTHUR (Ca Bar # 159793;
Texas Bar #13325650)
GEORGE F. BISHOP (Ca Bar # 89205)
JAMES T. McCARTT (Ca Bar # 121983)
HOSIE, FROST, LARGE & McARTHUR
One Market, Spear Street Tower, 22nd Floor
San Francisco, CA 94105
Telephone: 415-247-6000

ROBERT YORIO (Ca Bar # 93178))
CARR & FERRELL, LLP
2225 East Bayshore Road, Suite 200
Palo Alto, CA 94303
Telephone: 650-812-3400

By _____
Spencer Hosie
Attorneys for Plaintiff Burst.com, Inc.

HOSIE FROST LARGE & MCARTHUR
ATTORNEYS AT LAW

1 Market Street
Spear Street Tower, 22nd Floor
San Francisco, California 94105
Telephone: (415) 247 - 6000
Facsimile: (415) 247 - 6001

August 22, 2003

VIA FACSIMILE 312.853.7036

John Treece
Sidley Austin Brown & Wood LLP
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60603

Re: MDL 1332; Burst v. Microsoft Corporation

Dear John:

Pursuant to our phone call, we have agreed to the following:

1. The issues regarding searching backup tapes need to be presented to the court.
2. With respect to custodians, Microsoft will add Carper, Gershaw, Donka, Olson and Paddleford to your custodian lists for searching documents in response to all Burst's requests.
3. We will work together on a determination of whether to add Cutter, Faustini, Harrison, Lee, Unangst, Plastina and West to the custodial list. We feel strongly that these individuals should be custodians, but are willing to work with you on limiting the search terms to reduce burden.
4. With respect to Fitzgerald, Brumer, Stork, Slivka and Seekings, we will review the previous documents requests that you identify to us which you believe covered all of the Java-related documents included in Burst's request and only press this issue if we find gaps.
5. We will strike Raikes, Michali and Torborg subject, of course, to later discovery of facts which might make them appropriate custodians.

HOSIE, FROST, LARGE & McARTHUR

John Treece
August 22, 2003
Page 2

6. You will check further of Mazhar's involvement in the WMP 7.0 plug-in break and any files he is aware of regarding that matter. From our perspective, he must be a custodian and we think you will agree.

Thank you.

Very truly yours,

Spencer Hosie

cc: Co-Counsel
Competitor Case Counsel